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Thirtieth Session

VERBATIM RECORD OF THE TWELVE HUNDRED AND TWELFTH MEETING

Held at Headquarters, New York,
on Friday, 7 June 1963, at 3 p.m.

President:

Mr. BARNES

(Liberia)

- 1,2. Examination of conditions in the Trust Territories of Nauru and the Pacific Islands: reports of the Administering Authorities [4a, 4b and 5] (continued)

Note:

The Official Record of this meeting, i.e. the summary record, will appear in provisional mimeographed form under the symbol T/SR.1212 and will be subject to representatives' corrections. It will appear in final form in a printed volume.

AGENDA ITEM 4 (a)

EXAMINATION OF ANNUAL REPORTS OF THE ADMINISTERING AUTHORITIES ON THE ADMINISTRATION OF TRUST TERRITORIES: CONDITIONS IN THE TRUST TERRITORY OF NAURU (T/1606, 1614; T/L.1055 and Add.1; T/PET.9/21, 24, 26, 27, 28: T/OBS.9/4) (continued)

At the invitation of the President, Mr. R.S. Leydin, Special Representative for Nauru under Australian Administration, took a place at the Trusteeship Council table.

Mr. LEYDIN (Special Representative): The Trusteeship Council has been examining conditions in the Trust Territory of Nauru. In this important work the Council has had the assistance of the annual report of the Administering Authority for the year ending 30 June 1962 and the two parts of the opening statement presented by me as Special Representative, as well as replies to questions put to the Chairman of the Nauru Local Government Council, Head Chief Hammer de Roburt, and to me.

As a background to the information obtained in this way, the Trusteeship Council has had available also a report prepared by its own Visiting Mission. Although this report was considered by the Council at its 1962 session, it is worth remembering that it was forwarded by the Chairman of the Mission to the Secretary-General of the United Nations less than a year ago. We may usefully remind ourselves also that the Mission which prepared the report was constituted by four members of this Council, members widely experienced in the work of the Council and inspired by the high ideals which actuates the Trusteeship Council in its endeavours to advance the welfare of the people of the Trust Territories.

Much, indeed most, of the debate in this session has been devoted to the question of resettlement, and in this members of the Council have shown their awareness, as did the Visiting Mission in its report and the Administering Authority in its opening statement, of the paramount importance of resettlement.

(Mr. Leydin, Special Representative)

It will be recalled that the Visiting Mission in paragraph 36 of its report said "It is the future that matters" and in one of its closing paragraphs, paragraph 145, the Mission said again "It is the future that matters".

Nevertheless, the Administering Authority's concentration on the new home has not distracted it from the effective discharge of its other important responsibilities. Concurrently with the widespread and painstaking search which I described in the opening statement, the Australian Government on behalf of the joint Administering Powers has continued to devote its earnest attention to the faithful and fruitful discharge of its other responsibilities to the Nauruan people under the terms of the trusteeship granted by the United Nations to the Governments of Australia, New Zealand, and the United Kingdom.

It is to some of these other important matters that at this stage I wish to invite the Council's attention. It is essential that we maintain and if possible increase the efficiency of the social and other services on which the people of Nauru depend for the maintenance and improvement of their health, their education and their training, and their experience so that they will be able to meet successfully the challenges of the future and be ready to grasp firmly the opportunities which will present themselves in a new environment.

The Administering Authority has furnished the Council with information which, it believes, shows that the interests of the Nauruan people are well served. But the Soviet representative will not be comforted. He has been unable to perceive, despite abundant evidence, one single thing to commend in the work done by the Administering Authority. For him all is darkness, unrelieved by a single ray of light.

What were the conditions found at Nauru by the four members of the Council's own Visiting Mission when they went to the Island only last year to observe for themselves, on the Council's behalf, the conditions which actually exist there?

We know that the Mission told the Council, among other things, "From so many points of view the state of affairs on the Island is indeed enviable".

(T/1595, para. 46).

(Mr. Leydin,
Special Representative)

No doubt, the Mission was prompted to the use of this emphatic sentence by observing the things that the Head Chief and I myself see in moving around the Island from day to day. What indeed do we see? Let me try to recall scenes which, in Nauru -- and in other fortunate countries -- are taken for granted. In all the Nauruan districts, plump laughing youngsters romp everywhere; the voices of their brothers and sisters can be heard calling their lessons in the classrooms of attractive modern schools: Nauruan mothers are cheerfully busy in domestic work in their substantial homes; the sick are being tended in a spacious, elaborately equipped and comfortable hospital; an experienced infant welfare nursing sister at one of the district clinics is advising a group of mothers nursing their babies; some school children at the dental clinic await examination by an experienced and qualified dentist; cars, motorcycles and buses carry passengers along the well-paved main Island Road to one of the two general stores, where they fill their baskets after choosing from a wide range of imported foods and other goods: and hundreds of Nauruans are happily at work in the offices, stores and workshops of the Administration, of the British Phosphate Commissioners and of the Nauru Council. If night has fallen, they are attending meetings in the districts to hear a report from, or to instruct, their elected representative on the Nauru Council, or they are at the Council's social centre, where Nauruan men and women are presenting one of their traditional concerts or are gathering to discuss important community questions such as that of resettlement. That the Nauruan people are in fact healthy, happy and prosperous, as I reported in my opening statement, is, one would think, beyond question, but that fact does not rest on the mere assertion of the Administering Authority.

The continuing value of the Visiting Mission's report has been recognized during this session of the Council, when it has been freely quoted, but, in view of the statements made by the representative of the Soviet Union, I ask the indulgence of the Council in turning to it once again:

In paragraph 39 of this report the Mission said:

"Although the Nauruans have serious complaints about their non-appointment to higher posts there is no unemployment".

In paragraph 40 the Mission reported:

"There is no want or hunder on the Island, and no taxes. Social services are free".

(Mr. Leydin,
Special Representative)

In paragraph 41:

"Public services are well organized and well run".

Turning to education, the Mission states, in paragraph 42:

"The programme of building new schools has been completed and all the Government schools are now excellently housed. Children are carried free to school in buses ... The Mission was impressed by the work of the Department of Education and by the spirit of the teachers. Generally the schools, primary and post-primary, ... are expanding and improving. Year by year increased use is made of scholarships and cadetships ..."

The Mission also observed the judiciary at work and said, in paragraph 43:

"The Courts appear to function satisfactorily ..."

In paragraph 44:

"All these material benefits are accompanied by relationships which are on the whole friendly and profitable".

Finally, in paragraph 46:

"It would be easy to extend this list of assets and advantages --
The people are all literate. They already have the experience of working a system of representative government with a full adult suffrage".

This, then is the picture painted for the Council by the four members of the Mission who were able personally to observe and inquire into conditions on the Island. The evidence of a single eye-witness should usually be worthy of attention. If it is corroborated by a second eye-witness, so much the better, and it is then as a rule regarded as reliable. Here, however, we have no less than four eye-witnesses, one of whose tasks was to make a critical assessment of the conditions produced on the Island by the work of the Administering Authority. These considered statements made by responsible and experienced men repeated in substance the story which had been told by each of the earlier Visiting Missions.

It may assist the Council if I now set out in some detail the actual position in regard to the supply of water, which has been discussed in this session. Homes in Nauru normally rely on domestic storage tanks fed by the rain piped from their roofs. There are periods, sometimes prolonged, when no rain falls on the Island.

(Mr. Leydin,
Special Representative)

Against this constant threat of drought the British Phosphate Commissioners insure the Island's population by carrying water from Australia and New Zealand and storing it in great concrete tanks. It is distributed free of charge to homes owned by the Commissioners and tenanted by their employees.

For homes owned by the Administration and tenanted by the Administration's employees, the Administration purchases water at a cost of five shillings per 1,000 gallons and supplies and delivers it free of charge to its tenants. For homes owned by the Nauru Local Government Council or privately owned by Nauruans, the Council purchases water at the same cost as the Administration, that is, five shillings per 1,000 gallons.

No charge is made by the Commissioners or the Administration for water supplied to their tenant employees. It is supplied as a condition of their tenancies and a condition of their employment and is regarded as a part of the remuneration for their labour.

The scarcity on the Island of water from natural sources, the Soviet delegation attributes to the activities of the British Phosphate Commissioners. No evidence is offered to justify this remarkable statement, and my delegation knows of no evidence to support it. However, the Council has heard a statement read by the representative of the World Health Organization, who said that, with the completion of bulk storage tanks and the improved domestic storage mentioned in the Annual Report, the problem of water supply will have been largely solved.

Dealing with the question of phosphate royalties and other benefits, the representative of the United Kingdom drew attention to the comparison, given in paragraph 112 of the Visiting Mission's Report of the cost of superphosphate in various countries including Australia. The distinguished representative said: "It is the belief of my delegation that something near a fair balance of benefits has in fact accrued to all concerned".

The Visiting Mission believed that the current benefits enjoyed by the Nauruans are substantial and it submitted, not unsupported generalities, but figures to show that at 30 June 1961 the Nauruans received 24 per cent of the export value of the phosphate.

(Mr. Leydin,
Special Representative)

Total royalties paid during the year under review amounted to £276,000, while the total amount paid by the British Phosphate Commissioners to meet expenditure by the Administration was nearly £500,000.

(Mr. Leydin
Special Representative)

Royalties paid direct to Nauruan landowners during the year amounted to nearly £82,000 and the amount invested on their behalf for later payment was nearly £52,000. Thus the total royalties for Nauruan land landowners was about £134,000. In addition nearly £65,000 was paid to a fund for the use of the Nauru Local Government Council and over £73,000 was paid to the Nauruan Community Trust Fund.

These substantial figures are financed by the sale of phosphate and are included in the price paid for superphosphate by the consumer. From this source also come the funds used to maintain the high standard of living among the Nauruan people and the high standard of free social services in respect of which the representative of the United Kingdom said:

"I venture to suggest that few of the countries represented in the United Nations are in a comparable position ..."

The complexity of the problem posed by the request of the Nauruan people that they be able to exercise full sovereignty on an island which is part of Australian Territory has been recognized by nearly all members of the Council. In pointing this out the French representative said:

"The notion of independence and sovereignty should be entertained in this debate only with extreme caution. The size of the Nauruan community must always be borne in mind. Let us not be too dogmatic; let us rather attempt to find appropriate solutions to the human problems which will arise when the transfer takes place". (Ibid, page 47)

The representative of New Zealand reminded the Council that its Visiting Mission, referring to resettlement, said:

"Only when this single dominating problem of the future is solved can answers to other questions fall into place". (Ibid, page 8)

not that statement find affirmation in every informed and objective mind?

Head Chief showed his appreciation of this, when in reply to a question at last year's session of the Trusteeship Council he said among other things, "I think the main problem lies in the reconciliation of the wish of the Nauruan people to set up an independent sovereign State on an island adjacent to Australia with the wishes of the Australian Government".

(Mr. Leydin,
Special Representative)

The enunciation of a principle or the statement of a desired objective is a first step in many human endeavours. It is a proper and even a necessary beginning. But it is not enough. It is not, it cannot be, if we are to produce something more than an idea. It cannot be the only or the final step. We must look beyond the statement of principle or objective to observe and examine the circumstances or conditions in which we hope to transform our wishes into accomplishment. We must confront, as the Administering Authority has tried to do, the questions "How can this be done? In what way having regard to the existing situation can this wish be realized?"

Mindful of its responsibilities under the Trusteeship in accordance with the spirit of the United Nations Charter, the Administering Authority is determined not to be mesmerised by the apparent intractability of this problem. It must press forward to a solution, a solution inevitably shaped in part by the unyielding reality that we know of no island which offers all the conditions sought by the Nauruan leaders on behalf of their people; a solution which is compelled to recognize that despite anxious endeavours we have not been able to find a place where a sovereign State can, in accordance with the requests and proper aspirations of the Nauruan people, be created without damage to the proper and legitimate interests of others. But, a solution also which takes into account the wish of the Nauruans to preserve their own identity as a people and takes into account too the important fact repeatedly emphasized by the leader of my delegation that a decision in this matter involves human beings and involves therefore the welfare and the happiness of the present and future generations of Nauruan men, women and children.

"Until a new home has been selected and the necessary arrangements completed"

-- the New Zealand representative said -- "the development of the Nauruan people and their planning for the future must inevitably be distorted". (T/PV.1208, p. 8)

In these circumstances, would it be prudent or wise to make any important decision, affecting the status of the Nauruan people, prior or without reference to this dominating problem of resettlement? True, the Soviet delegation has said there is no need for resettlement. But this, while once again ignoring the realities of the situation, runs counter to the expressed wishes of the Nauruan people.

(Mr. Leydin,
Special Representative)

In dealing with what the representative for China called this baffling human problem, the Administering Authority will continue to discharge in a responsible way the responsibilities entrusted to it and the associated Powers by the United Nations. To that end it looks forward in the political field to the effective use by the Nauru Local Government Council of the important wider powers which it will soon enjoy and when these are in force and the Nauru Council's administrative arrangements under the new powers are working smoothly it will be ready for renewed discussions looking towards a further expansion of the Council's power and authority. And as the representative of New Zealand, if I may quote him again, said:

"Once the basic decisions on resettlement have been made the present and the future will lock together and both will become equally real".

(T/PV.1208, page 9-10)

I am reluctant to delay the Council but there remains for me one important duty. The Soviet delegation has tried to show that the Administering Authority has ignored the recommendations of the Trusteeship Council. In doing so, it has used terms which with the greatest kindness can only be called extravagant and intemperate. My delegation rejects this accusation and points with confidence and with pride to my country's history of co-operation with this Council and the United Nations, to the record of its careful and courteous consideration of the Council's recommendations, and to the reports of all the Visiting Missions on the work of the Australian Government in the Trust Territories.

(Mr. Leydin,
Special Representative)

The Council is aware that in the political field the Administering Authority is dealing with a problem complicated by the question of resettlement. Indeed the representative of the United States has said that it was certainly a problem of the greatest complexity, and he recalled no instance in the annals of international relations of the type of migration with which we are presented here. Nevertheless, the Administering Authority has attacked the core of the problem with the greatest energy, meantime providing for a wide extension of the powers of the Nauru Local Government Council. It has reported on these matters in detail to the Trusteeship Council.

Arrangements have been made for regular annual meetings between the Nauruan leaders and the British Phosphate Commissioners, and the Trusteeship Council has been told that the first meeting will be in November next when the question of phosphate royalties will be reviewed. The Soviet representative said that my delegation blamed the Nauruans for any delay which might have occurred in this matter. This is not so.

The steps taken for the advancement of Nauruan officers to positions formerly occupied by Australians will, I believe, give much satisfaction to the Council. It has already been reported in my opening statement that Nauruan officers have been appointed to the positions of Postmaster, Supervisor of Works, Senior Survey Field Officer and Officer in Charge of Records. I have also told the Council that a Nauruan officer is in the final stage of training with a view to his appointment to the senior executive position of Official Secretary at the end of 1963. Towards the end of last year the question of advancing Nauruan officers to positions occupied by Australians was examined in great detail and, in addition to the moves already mentioned, plans were drawn up for the accelerated training of Nauruan officers considered suitable for later appointment to a number of other positions. These include the positions of Infant Welfare Sister and the Nursing Sister in Charge of Tuberculosis Centre, appointments to which will be made shortly. The plans, which have been approved by the Minister for Territories, provide for a general progression in the appointment of Nauruan officers to all other public service positions occupied by Australians wherever it seems likely that a sufficiently qualified Nauruan officer will be available within a reasonable time.

(Mr. Leydin,
Special Representative)

The Council knows that many other recommendations made by it from time to time have received the careful consideration of the Administering Authority, which has invariably reported the results to the Council.

Conscious of the work done in the search for a new home, of the arrangements in hand for the wide extension of the Nauru Local Government Council's powers, of the provisions for increased consultation between the British Phosphate Commission and the Nauruan leaders, of the advancement of Nauruan officers to senior positions in the public service, of the proposals made for associating the Nauruans with the duties of the office of Public Service Commissioner, of the steadily increasing benefits received by the Nauruans from the operation of the phosphate industry, of the continued improvements in the standard of living and of medical, educational and other public services, of the intention soon to combine the Yaren and Consolidated Primary Schools, the Administering Authority confidently believes that, to recall the words of the Visiting Mission, it has continued to serve the interests of the Nauruan people well. It is confident also that the work done preserves the commendation of the Trusteeship Council.

I listened with great interest to the thoughtful contribution to the debate made by the Liberian delegation, particularly in view of the wide experience in the activities of the United Nations of that country's representative. Her comments, particularly on the important question of resettlement, will be of value to me as Administrator and, I am sure, also the Nauru Local Government Council in our future discussions.

My delegation also acknowledges, without complacency but with appreciation, the references made by most members of the Council to the work of the Administering Authority. No administration is ever in a position to say that all its work is complete or perfect, and the administration of Nauru and the Nauru Local Government Council will be encouraged in their further labours for the Nauruan people by the comments made and the views expressed during this session of the Trusteeship Council.

The representative of China made some generous references to the leader of the Australian delegation, Mr. McCarthy, who has asked me to express his warm thanks. I wish to thank too the representatives on the Council who made kind references to the Head Chief, Councillor Hammer de Roburt, and myself. I have greatly appreciated also the courtesies extended to me by members of the Council both during and in between the meetings of the Council.

(Mr. Leydin,
Special Representative)

Finally, Mr. President, I should like to pay a tribute, if I may be permitted to do so, to the efficient way in which, under your able direction, the business of the Council has been conducted. To observe the speedy and effective despatch of the Council's work under the firm but impartial guidance of an experienced President has been for the Head Chief and for me an experience which we shall recall with pleasure and admiration when we return to the Trust Territory of Nauru.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): I should like to use my right of reply to make a few observations on the final statement of the Special Representative.

I am in some difficulty in beginning my remarks because I do not know what I should feel, to begin with, about the intervention to which we have just listened. I think that what should predominate is the feeling of a man who, up to a certain point, has been flattered by the statements of the Special Representative if one bears in mind that at the last session of the Trusteeship Council, about this time last year, the Special Representative of the Administering Authority at that time -- who is now a member of the Australian delegation -- Mr. McCarthy, graciously passed over in silence the points of view that were expressed by the representative of the Soviet Union, my predecessor, in the course of the examination of the situation in Nauru. That is why I must say that this year we have been really flattered by the attention which has been accorded to us and we should like to make a suitable reply to the observations of the Special Representative.

Indeed, many observations have been made following our statement and in regard to our general attitude towards the Trust Territory of Nauru. Once more -- and this is neither the first time nor the second -- at the present session of the Trusteeship Council a picture has been painted of life in Nauru which, if one can believe the Special Representative, is almost an earthly paradise. However, we must leave that to the conscience of the representative of Australia since, in our opinion, such affirmations only express the point of view of the Administering Authority.

To a man who has attended several sessions of the Trusteeship Council -- sessions which take place year after year -- it is obvious that the Soviet Union delegation, as it has again this year, assesses the situation in the Trust Territory according to the interests of the inhabitants of the Territory.

(Mr. Fotin, USSR)

In the case with which we are dealing here we are thinking of the situation of the inhabitants of the island of Nauru, who are confronted with extremely grave and complex problems.

In the first place, we base our opinion on the desires expressed by the representatives of the people of Nauru. We could also point out another circumstance here. As is well known, each year, at each session of the Trusteeship Council, the Soviet delegation puts forward its observations. Many of these are not accepted by the Council and not included in its recommendations; neither do they appear in the report of the Trusteeship Council to the General Assembly and to the Security Council. But still, the members of the Council have been able to note that in spite of this fact, the delegation of the Soviet Union has striven loyally -- and I stress the word "loyally" -- to work each year on the basis of the recommendations adopted by the Council during its session in the previous year. We put forth nothing which the Council has not itself adopted, although it is natural that some of the views of the Soviet delegation are repeated and find their reflection in our statements.

In our main statement we noted the failure on the part of the Administering Authority to implement certain of the recommendations made by the Trusteeship Council at its twenty-ninth session -- or even all of these recommendations -- in respect of the island of Nauru.

Proceeding from the concrete situation, the actual facts as they exist, and anticipating somewhat, I wish to draw the attention of the members of the Council to the fact that nowhere, in no statement of the Administering Authority, was it clearly indicated what the Administering Authority thought of the fundamental documents, which, in my opinion, constitute the basis for our work. I refer to the documents submitted by the indigenous population of Nauru. These documents are well known to all. However, last year at the twenty-ninth session of the Trusteeship Council, we heard a statement from the Administering Authority to the effect that it had not yet had time to examine the proposals of the Nauruan people and could therefore not make any statement in this connexion. The Administering Authority has not made any assessment thereof.

(Mr. Fotin, USSR)

It has not indicated whether it has any intention of responding to the desires expressed in these documents. These documents -- and I do not think anyone doubts this -- really come from the people of Nauru, for they were submitted to us by very responsible members of the United Nations Visiting Mission who received them from the hands of the representatives themselves of the Nauruan people.

This year, unfortunately, we have once again found in the statements of the Administering Authority no evidence of a detailed, precise and clear study of the proposals formulated by those to whom the island of Nauru really belongs, that is the people themselves. I think that perhaps the delegation of the Soviet Union was wrong in not asking questions in this regard of the Administering Authority during the question-and-answer period. But let us pass on to the actual situation as it exists on the island of Nauru.

At the outset I will associate myself with the point of view of the people of Nauru as expressed by themselves, not with the point of view which the Administering Authority is defending. I will take the liberty of asking, for a short time, for the attention of the Council while referring to certain fundamental statements of the representatives of the Nauruan people which are contained in the documents submitted to us by those representatives.

I have in mind first of all the proposals of the Nauruan people relating to the question of resettlement, submitted to the Government of Australia on 19 June 1962. These proposals appear in document T/1600 as well as in the memoranda contained in the annexes to the report of the Visiting Mission to the island of Nauru, document T/1595/Add.1.

The representatives of the Nauruan people considered various questions, and of course they did not fail to consider the principal one. In the most concrete fashion, most directly, they also studied questions which perhaps are not of any immediate interest to them but which nevertheless involve their life under the trusteeship administered by the three Administering Powers.

First of all, in document T/1595/Add.1, annex I, appendix I/A, page 10, we find a statement by the Local Government Council of Nauru as follows:

(Mr. Fotin, USSR)

"The ultimate political aim and object of this Council is self-government for the Nauruan people within, we hope, a decade from last year."

Commenting on the position of the Administering Authority, they went on to say:

"It is a matter of concern for us to learn now that during these same years the three Governments in fact had not been working towards that end but rather towards the dispersal of our people over the three countries, to be assimilated in these countries." (Ibid., page 11)

I wish to point out that if statements of this type or phrased in these terms are at times made by the delegation of the Soviet Union, the members of the Trusteeship Council will understand why.

Continuing to speak of their aspirations, the representatives of the Nauruan people consider that in respect of their Territory, as of all other Trust Territories, target dates, or, as they say, realistic target dates, should be set for their gradual progress towards independence. As a matter of fact, they say, in annex II, the following:

"Looking enviously around us and beyond us" -- and I hope the representative of the Administering Authority has noted that word "enviously" which appears in the memorandum submitted by the Nauru Local Government Council -- "we see other islands and peoples, some just emerging from their old life while others are being prepared, with realistic target dates fixed for progressive advancement towards independence. We are not even favoured with tentative target dates."

(T/1595/Add.1, annex II, page 3)

It seems to me that the situation referred to by the representative of the Nauruan people in 1962 remains the same in 1963, since once again this year we hear statements to the effect that the Administering Authority has no intention of fixing such dates, no intention of carrying out one of the fundamental recommendations adopted at the last session of the Trusteeship Council.

(Mr. Fotin, USSR)

Further, in speaking of their fundamental interests in the field of economics, and particularly in answering the question of whether taxes exist on the island of Nauru, the representative of the Nauruan people quite rightly said the following:

"5. Far too much wealth altogether from the phosphate is being manifested about, and not by Nauruans, that the Council is very reluctant to turn around to the people and demand by legislation the effect that they should make the best they can out of their quite apparent poverty to help themselves by paying taxes out of their pockets." (T/1603, Annex II, Appendix I)

In Annex III we find the following statement by the representatives of the Nauruan people with respect to the replacement of Australian staff by Nauruans:

"It is our feeling that the actual replacement of expatriate staff by Nauruans will be delayed as long as possible and we have reasons to think so.

"Recently, the number of expatriate staff on the Administration has increased by leaps and bounds. ...

"It will be noted that never in the history of Nauru has the Administration had such a high number of expatriate staff." (Ibid., Annex III)

The representatives of the Nauruan people go on to propose very concrete measures to replace all Australians who are occupying senior posts by Nauruans who are qualified to fill these posts. In particular, they state the following:

"For example, plans should have been made to accelerate the rate of preparing Nauruans for these posts, especially those Nauruans who were doing similar jobs to those which are now requiring expatriate personnel."

The PRESIDENT: When I called upon the representative of the Soviet Union it was my impression that he intended to make some observations on the closing statement of the Administering Authority. It seems that the representative of the Soviet Union is now making another general statement. I believe that if all members of the Council are now to make general statements our deliberations would be almost endless. I would therefore appeal to the representative of the Soviet Union to make whatever observations he may wish to make on the closing statement of the Administering Authority rather than to engage in making another general statement.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): Thank you, Mr. President. I shall heed your instructions with great pleasure. My only purpose in quoting the statements of the representatives of the Nauruan people was to show, in answer to the closing statement of the representative of the Administering Authority, that the situation in Nauru was far from being a paradise on earth, as he, in our view, attempted to portray it. Nevertheless, I shall submit to the President's decision and shall leave aside further quotations from these excellent documents submitted by the Nauru local Government Council for our consideration.

In summing up, I would like to say that not in the question of the future of the island and its people, not in the question of the sovereignty of the Nauruan people over the island to which they will be transferred -- and we know that the Nauruans require that they should enjoy territorial sovereignty over their new home -- not in the question of the development of the organs of local government, and not in the question of meeting the daily social needs of the inhabitants of Nauru, has any substantial progress been made.

In substance the plan proposed by the Administering Authority, along with its refusal to hand over sovereignty over one of the islands to which the Nauruan people will be transferred, means the continuation of the old plan which was submitted to us at the last session, that is the plan of assimilation, the plan of including the Nauruan people in one form or another within the framework of Australia, a plan which means the physical annihilation of the Trust Territory of the island of Nauru.

Certainly from one point of view we now have a Trust Territory here. We have witnessed the process of its plundering and it will virtually cease to exist. The time is not far distant when only cliffs and rocks will remain on the island of Nauru and when the Territory will cease to be a Trust Territory for which there is international responsibility; instead it will become a possession of Australia, an island on which the Nauruans will live in conditions where their ambitions and desires will not be fulfilled.

We tried to the best of our ability to defend the interests of the Nauruans, basing ourselves on these fundamental documents which they submitted to us. We do not agree with the Administering Authority and we stated this quite plainly. We have an excellent basis for this view, and this is also the view expressed by the Nauruan people in the documents submitted by them for the consideration of the Trusteeship Council.

Mr. McCARTHY (Australia): Recognizing the wise principle enunciated by the President in his recent ruling, I do not propose to attempt to reply to the allegations of the representative of the Soviet Union. The facts of the Australian case and the situation as it exists on Nauru have been made abundantly clear to this Council in the Annual Report, in the statements made by me and by the Special Representative, and in the detailed and very full replies given by the Special Representative and other members of the Australian delegation to the questions asked by the Soviet representative and other representatives round this table. However, I would simply like to make the following observations.

The papers to which the Soviet representative referred as annexes to the report of the Visiting Mission were discussed in this Council last year, contrary to his assertion. One of the papers to which he referred in particular was made the subject of a special statement by me in one of my statements to the Council last year. Therefore, there is no substance to his suggestion that these papers were not discussed last year. That was the time to discuss them when the report of the Visiting Mission was being discussed.

(Mr. McCarthy, Australia)

I do not propose to attempt to answer the series of allegations which the Soviet representative has made. I would just like to say this: that he referred last year to my inaction in another capacity in this Council in making no reference whatever in my closing statement to the representative of the Soviet Union. I did that partly in the hope that this very situation might be avoided -- that by making no reference to the Soviet remarks we would be spared the time and trouble involved in additional statements being made after the proper business of this Council properly has been concluded.

This year, the Special Representative, following another principle, did reply to some of the observations made by the Soviet Union; and the Soviet Union has used the occasion, as you rightly observed, to make another statement, the sort of statement that is part, or should be part, of the general debate in this Council; equally, since the Soviet representative has referred to my inaction last year, the Soviet representative made a similar statement in reply to nothing that was said by the Australian delegation.

The PRESIDENT: I take it that the members of the Council will endeavour to utilize the general debate to express their views with regard to consideration of the matters before the Council. Now that the closing statement of the representative of the Administering Authority has been made, I take it that the members of the Council who would wish to make observations on that closing statement or exercise the right of reply to any references to their delegations will confine themselves to those observations in right of reply. But to engage in another general statement, I am sure, would create a situation where our deliberations would be endless. I am sure that the Trusteeship Council can be immortal without being eternal.

I thank the Special Representative for his statement, as well as for his patience and courtesy in answering the many questions put to him. In behalf of the Council, I wish him and the Head Chief, Mr. Hamner de Roburt, a safe return to Nauru, and our best wishes to the people of the island.

Mr. Leydin withdrew.

The PRESIDENT: The Council will recall that the question of appointing committees to prepare conclusions and recommendations was left to be decided when the occasion arose. Unless I hear any objections, I now suggest that Liberia and the United States of America be appointed as members to draft the conclusions and recommendations on conditions in Nauru.

It was so decided.

The PRESIDENT: The drafting committee will meet next Tuesday morning at 10.30 a.m. in the President's office, room C-209.

AGENDA ITEM 4 (b) AND 5

EXAMINATION OF ANNUAL REPORTS OF THE ADMINISTERING AUTHORITIES ON THE ADMINISTRATION OF TRUST TERRITORIES: CONDITIONS IN THE TRUST TERRITORY OF THE PACIFIC ISLANDS (T/1611; %/L.1056; T/PET.10/35; T/OBS.10/8) (continued)

At the invitation of the President, Mr. Goding, Special Representative of the Administering Authority of the Trust Territory of the Pacific Islands, took a place at the Council table.

Mr. GODING (Special Representative): I am happy to have this opportunity to come back, because the timing of the presentation has been such that we were not able to respond to questions put yesterday for further detailed information during the question period. The representative of the Soviet Union asked if we could supply the resolutions and recommendations of the most recent sessions of the Council of Micronesia. The report before the Council for the fiscal year 1962 contains the resolutions through that period. However, the recent sessions will be the subject of the official report for the fiscal year 1963. The full text and titles of the resolution are not available here. I can give a brief review, however, of what took place at the September-October session.

(Mr. Goding,
Special Representative)

In Koror there were nineteen recommendations passed. These recommendations, as such, do not need approval or disapproval; they range from recommendations that a new taxation study be conducted, that district legislative enactments be codified, that a central shipping port be established in Saipan, that the Micronesian Wage Title and Pay Plan be revised, that more scholarships be awarded, that an economic development fund be established, and that extension of public utility services be made in each of the district centre communities; also that further aid be given to sponsorship students studying in Guam. Practically all of these recommendations have been accepted, in principle, by the Administration, and action has been taken in most of them to implement the actions that are recommended. Two declarations were passed and received the approval of the High Commissioner. The first was a declaration calling for creation of a territory-wide legislature; the second was a declaration calling for a special session to be held in March 1963. Three resolutions were passed and received approval of the High Commissioner. The first resolution established a legislative drafting committee, to be composed of a representative from each of the six districts. This committee was established, and drafted preliminary recommendations for consideration at the March 1963 special session. The second resolution adopted an official flag for the Trust Territory; the third resolution called for adoption of the Trust Territory seal for use by the Council of Micronesia. A territory-wide contest is in process to select designs for such a seal. This is a summary of the recommendations and proposals that were considered at the September-October session.

At the special session, in March 1963, four recommendations were passed: the first, that there be an upward revision of the "C" scale of the Micronesian Wage Title and Pay Plan. This is the professional and executive category, and this revision is now under way. The second recommendation called for an upward revision of the "A" and "B" scales of the Micronesian Wage Title and Pay Plan; and, as I indicated, this, too, is receiving action. The third recommendation is the one I discussed in detail this morning, having to do

(Mr. Goding,
Special Representative)

with the framework of a territorial legislative body. The fourth recommendation was one calling for the establishment of Law Day in the Trust Territory of the Pacific Islands; the day designated was established by proclamation subsequent to that recommendation. This covers, I believe, the questions having to do with the resolutions and recommendations.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): With your permission, Mr. President, I should like to convey the thanks of the Soviet delegation for the answer just given to one of our questions. In any case, I wish to thank the Special Representative for giving us the contents of the decisions and basic recommendations which were adopted by the Micronesian Council at its sessions in September 1952 and March 1963.

However, at the same time, I think that it would be incorrect and contrary to my own feelings if I did not say that we are a little disappointed at the turn of events.

As you will recall, at yesterday's meeting of the Trusteeship Council, in response to a promise of the Special Representative to present the texts of these very important documents to the Council, the representative of the Soviet Union stated that this was truly a very businesslike manner of approaching the question. Today, unfortunately, we note that we will not receive these documents not only not before the general debate but that we will have to wait still another year. I must say that we are really disappointed. We attach the greatest importance to the views of the representatives of the indigenous population of any Trust Territory and, moreover, the Trust Territory of the Pacific Islands. With your permission, Mr. President, I should like to ask the Special Representative if he cannot supply us -- supposing that he cannot supply us with the texts of the basic documents examined during the two sessions of the Micronesian council -- before the beginning of the general debate at least the two documents which he mentioned, the first being one of the two statements that was adopted by the Council at its 1962 session concerning the territory-wide legislative organ and the second the document which was considered in March of this year which, has already been referred to by the Special Representative, which, in his own words, speaks of the limits of that legislative organ.

The PRESIDENT: I will request the Special Representative to answer the question since it arises out of his last answer.

Mr. GODING (Special Representative): I am disappointed that I am not able to supply the text. It is not available here in New York; I had assumed that they were. . We have the text only of the March 1963 resolutions. We can furnish them by mail; we might be able to supply them from Washington, but I am not certain about that. I should like to observe that the period under review is the fiscal year 1962 and that the representative of the Soviet Union, in pressing for this information, is projecting -- it is true that our discussion anticipated and touched on the calendar year just elapsed or the eleven months elapsed, but that is not the period officially under review by this Council at this time. However, I have the information on some of the other questions that were asked.

One of the questions asked was: on what scale is the national income for the Pacific Islands calculated for 1960, 1961, and now we can add 1962, separately and per capita. Page 54 of the annual report under consideration has basic information on this aspect. I should like to note, however, that it is extremely difficult to compute national income in any meaningful way in an economy which still rests to a great extent on a subsistence basis. It is worthy of note that neighbouring areas of the Pacific such as the Trust Territory of New Guinea, for example, have experienced similar difficulties in endeavouring to obtain meaningful national income data. Actual cash income going into the local community can be measured, but this does not represent a true picture when a community lives largely off the land and sea. Thus a family or individual with a relatively small cash income may still be comparatively well-off. As noted on page 243 of the annual report, wage income in the Territory for 1962 was over \$3.5 million. Copra and other export revenues accruing directly to the producer was well over \$2 million. The sale of products locally and other sources yielded an additional \$.5 million. Cash income for 1962 came to approximately \$6.1 million. Computed on a per capita basis, this was approximately \$76. As noted above, this per capita income does not reflect actual income in terms of basic subsistence for the majority of the inhabitants of the Territory. Using statistics available in prior annual reports, per capita income for prior years can be similarly stated.

(Mr. Goding,
Special Representative)

The question with respect to the per capita expenditure for medical services: I can say that the annual report has most of the data needed for this information on page 220. In 1962 our public health operating costs were \$601,000; hospital construction \$193,000 and the new district of the Marianas \$300,000, which had not been incorporated because of the change in administration, provided a total of \$1.1 million or a per capita expenditure of approximately \$13.

For 1963, the year just terminating, total expenditure is \$1.2 and for 1964 it is projected at \$1,480,000. Similar computations can break down the per capita income or expenditure. The per capita expenditure for education is shown on page 271 of our annual report. This expenditure is shown at the top of the page is only that of the Trust Territory Government. It does not show the expenditure in the Marianas District, and it does not incorporate the expenditure by local Government districts and municipalities, nor does it show the expenditure by private institutions. Additional expenditures in the Marianas District total \$155,000 which should be added to the total figures. Local governments spent approximately \$250,000 and missions and private schools spent approximately \$250,000.

A further question was asked about the literacy rate in the Trust Territory. The estimates for literacy for 1963 are computed as to the total population: five years of age and over, approximately 50 per cent; in the five to fourteen-year group, 50 per cent literate; in the fifteen to twenty-four age group, 85 per cent; in the twenty-four to forty-four age group, 40 per cent; and forty-five and above, 15 per cent. This is literacy in English. This is an appreciable increase over the official figures for 1958 given on page 197 of the annual report.

Literacy in the vernaculars and in Japanese is approximately the same as that listed on page 197 of the Annual report.

I hope that this information will complete records and supply the information requested by the representative of the Soviet Union.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): In this connexion I would like to point out the following circumstance. At the twenty-ninth session of the Trusteeship Council, the Soviet delegation requested the Special Representative, Mr. Goding, to answer these few questions, which in our view would certainly help to show the situation of the indigenous population of the Trust Territory of the Pacific Islands. I do not think I am mistaken when I say that the national per capita income figures, the figures concerning the expenditure in the field of medical services per capita, and even the figures relating to literacy or illiteracy, are the best indicators and the best description of the policy of the Administering Authority in administering the Trust Territory.

As I already stated, we put these questions last year, at the last session. We were patient and we did not insist that the figures be presented last year. We were also patient when the seventeenth session of the General Assembly came along and we did not find then any documents which might have given the information we had wanted. We were also quite patient at the beginning of this session. We waited for the question and answer period, although we did hope that the Administering Authority would provide the information without being reminded of them and before we put those questions once again. Although we, of course, take measures based on these figures, based on the information requested from the Administering Authority, I must point out that with the exception of the last question, the answers to our questions were, unfortunately, not forthcoming.

In conclusion, I must say, using a word that was used by the Special Representative, that we are certainly disappointed in this case, and here the disappointment is obviously mutual.

The PRESIDENT: I suggest that the Council now hear the oral presentation of the petitioner, Mr. Hosmer. In accordance with rule 80 of the rules of procedure of the Council, the President of the Council, after having ascertained from the Administering Authority that there were no reasons why the matter should first be discussed in the Council, informed the petitioner that the Council would grant him a hearing in support of his petition as contained in document T/PET.10.35.

If there are no objections, I shall now invite the petitioner to take his seat before the Trusteeship Council.

At the invitation of the President, Mr. John Hosmer, took a place at the Trusteeship Council table.

Mr. HOSMER: I do not want my position here to be misinterpreted. I wrote a letter to the Acting Secretary-General about conditions as I found them as Public Defender of the Trust Territories, and that letter was turned into a petition before you. I am now here in support of that letter which has been dignified as a petition. I do not want to be misinterpreted by the Press about camping out here at the United Nations as a ban-the-bomb picket or as a picket of some sort. I came here at the invitation of the Council and I am pleased that you are hearing me.

I have had occasion to read the observations of my Government, the United States of America, in regard to jury trials in the Trust Territories. Let me tell you of my experiences in the Trust Territories and in the cases I was involved in. First of all there was a land title case. In this case the Land Title Officer under the Government of the United States held a hearing. He decided the question one way, in favour of one party and there was a ruling by Headquarters at Guam that that was wrong and that it should be decided the other way. So this Land Title Officer, without additional hearings, decided that he should follow the Administration.

If the Council pleases, I do not think that is the development of a good legal system. In the case of the Aimellik People vs. Thomas R., the decision of the courts was, by civil riot or commotion, overruled, and about twenty or thirty of the people of Palau were, as I understood it, incarcerated.

The Council must understand that under the public defender system, I was to represent all people who were involved with the Government. That is to say, if they were involved in a criminal way, I was to defend them; if they were involved in a civil way, I was to represent their side. Now I am a lawyer who tries to represent my client, whether it is on an international, a civil or a criminal charge, to the best of my ability. When I was appointed to this job, I was the elected Prosecuting Attorney of my county in Missouri and I never gave up that elected job. But let me show the Council what systems I found

(Mr. Hosmer)

pertaining to the way the law is enforced in the Trust Territory. There was a member of the Palauan Congress, a community court judge, who was charged with felonious assault. Now down there we use nine languages and it may be that what I said suffered in translation; it may be that what he said in return suffered in translation. But I had two excellent assistants, Francisco Aimelik and William O. Wally, and I am sure that the translation did not suffer too abruptly.

I advised this citizen of Micronesia that he had a very good defence on the grounds of self-defence, a defence known to our law since time immemorial. And I was very amazed, after he had studied it over one whole night, to find that he decided to plead guilty and not risk his defence, which I had plainly told him, in no uncertain terms, on my considered professional opinion, was a good one.

(Mr. Hosmer)

This mystified me. It was the first criminal case that I had tried down there in helping to clear the docket, the backlog, at Koror. It resulted in a plea of guilty.

The second case that I tried was that of Kalustus Ngirailengelang. An amazing thing happened in that case, something which I have never seen happen under the flag of the United States. The Trust Territory Government, an adjunct of the United States Government, used, vouched for and sustained its conviction on perjured testimony -- admittedly perjured testimony. I am sure that, since the Trusteeship Council has asked me to appear before it, members have obtained all the background material to which I refer in my letter, which has now been made a petition.

In the case to which I am referring, the witness Tkel came back on the stand at the Government's behest after a weekend -- he returned in a police car -- and swore that he had sworn falsely when he had been on the stand before for the United States and that he was now going to tell the truth. Well, in all my career as a trial lawyer, I have never seen anything like that. I am a damage-suit lawyer in Missouri. I have been a prosecuting attorney for eight years. I am familiar with the law of Missouri and the law of the Federal jurisdiction. There is a long line of United States decisions, in each of the States as well as in the Federal system, which says that no case tainted in any way with perjury -- one case uses the words "one iota of perjury" -- can stand.

That all this was happening under the United States flag was distressing to me. I therefore determined that I would see what we could do to overcome the repressive nature of this Government. My two excellent Micronesian assistants William O. Wally and Francisco Aimellik, and I stayed up most of the night in Koror. There is no library of case law down there; there is no casebook law. There is American jurisprudence, and out of that we developed and typed a brief. This brief was to the effect that there did exist in the Trust Territory a right to trial by jury.

In the next case, which was a land title case, we got up a demand and notice for jury trial. The Court of course said that there was no right to jury trials. I then asked the Court to allow me to seek a right of prohibition in the Appellate Division of the High Court. The Court refused to give me that right. Meanwhile, a civilian lawyer, Finton J. Phelan, Jr., wrote me from Guam, as the Public Defender, and told me that he was interested in the case of Engelbert Mendiola, or Koo Mendiola, on Ponape; Mendiola was in jail for the rest of his natural life, for having committed murder. I immediately contacted the District Attorney, or the Prosecuting Attorney for the Trust Territory, and the Chief Justice of the High Court. They told me that, soon after the Koo Mendiola case, the Trust Territory Government had fired the then Public Defender, a gentleman named George W. Grover, and that no appeal had been filed.

Having failed to get a test made in the Baules Sechelone case -- the case in which I had filed the demand for jury trial -- I got back to Guam and talked to Mr. Phelan and to the sister of Mendiola. Engelbert Mendiola is the nephew of Max, the Nan Markee of Net, one of the five legendary Kings of Ponape. Under the matriarchical system which exists down there, the son of this sister will be the next Nan Markee of Net. He lives on Guam and is a small boy.

It was decided that, having failed to get a test in the High Court and having exhausted the remedies that the Public Defender had within the Trust Territory Government, we would bring a case based on the fact that the former Public Defender had not advised Mendiola that he had a right to trial by jury and that we would bring a habeas corpus against Will Goding. Thus, at my expense we filed a suit against Will Goding as High Commissioner of the Trust Territory on Guam. That suit was filed in the only United States District Court in the Eastern Hemisphere of our world.

The case to which I have just referred was dismissed about four or five days after I had left Guam. I did not learn about it until one of President Kennedy's secretaries wrote to me and informed me about it; that was in 1962, after I had sent Mr. Kennedy a copy of the letter which I wrote to the Acting Secretary-General of the United Nations, U Thant. This assistant of President Kennedy told me that I apparently did not know what was going on in Guam.

(Mr. Hosmer)

Now, if I may turn to my Government's position, somebody down there in Washington, in the bureaucracy that we have, has misread -- or not read -- my brief if it is thought that I was basing it on the Constitution of the United States. There is no chance that these people have the benefits of citizenship under the Constitution of the United States. They are not citizens; the territorial sovereignty of the United States has never been extended to them. But I do want to remind the Government of the United States that, under the treaty power of our Constitution, the United States Congress delegated to the President the power to make rules for the Trust Territory. The reason that was under the treaty power was that it was a treaty between the United Nations and the United States. Under that treaty power, Congress delegated to the President the power to make all laws necessary for the Trust Territory.

President Harry S. Truman, in 1952, delegated that authority to Elbert Thomas. As you will remember, Elbert Thomas was a United States Senator; he is now deceased, I think. He enunciated a Trust Territory code. That Trust Territory code is a very enlightened document; it is a very good document. It has a provision for due process. Whose due process? The Micronesians' due process. It also has a provision -- and that is section 22 -- that says that the law of the Trust Territory shall be the common law.

The common law is not something we know nothing about. Since the days of Blackstone, Kant and Oliver Wendell Holmes, Jr., we have known what the common law is, because those distinguished men -- and many more before and after them -- have written on the common law. The common law is a body of laws that is plainly known. There is a host of decisions in the United States, in every state jurisdiction with which I am familiar and in the federal system of laws, which say that, when you adopt the common law as a part of your law, you have brought in the jury trial known at common law.

If you want to go on to the international field -- and international law is a vital interest of mine -- you can go back to Hugo Grotius, and you interpret all these things by the law of the governing Power. You interpret the laws enunciated by the United States for its non-government territories as the governing Power interprets them. That is a fundamental of international law.

I say that to relieve the repressive nature of the Trust Territory Government -- and I am not unduly critical of Will Goding in that regard, but all Governments are repressive to some extent -- I am not an anarchist or a believer in no

(Mr. Hosmer)

government, but I do believe that the rights of an individual should be the paramount consideration in government where they can be -- I determined that these people were entitled to jury trials.

Judging from the remarkable attitude of my Government toward the jury trial system, you would think and assume that somebody down in Washington was under the mistaken belief that Jury trials were invented by the Soviet Union. They were not. They are truly an international sort of thing. They were developed in France and they were brought into England -- you will remember Magna Carta, when King John was forced to solidify the right -- and they have been constitutionally perfected in the United States of America. Jury trial is mentioned several times in our Constitution. You have a book in your library by Sir Patrick Devlin, I believe -- an Englishman who calls a jury a little parliament. That is a pretty good analysis. I have been a prosecuting attorney for a long time. Before I can convict anyone I must convince twelve men -- I must have the unanimous decision of twelve men. To an outsider, to one who has not been familiar with jury trials, it would seem that that would be the most awkward way to go about the enforcement of the criminal law. And yet I want to remind you that it just takes a little bit of thought to think of many great and powerful men who have been convicted in this country by a jury. Juries will not hesitate, when they think a law is too harsh, to strike it down -- and the way they strike it down is by not convicting. And then the prosecuting Government has nothing to do but watch that law which is too harsh.

I am told that this is one of the few times that a citizen of a given country has complained of his Government before the United Nations. I want to say that my Government is not corrupt down there. It is perhaps very wasteful -- I will say that as an American taxpayer -- but it is not corrupt, and it is well-intentioned. My Government is always well-intentioned. Whether or not those things come out in practice is sometimes questionable. But I think you cannot say much about the administration of government down there, as pertains to my specialty, which is international law, except this: I do want to warn my Government that we have a Supreme Court in Washington, D.C., and it

(Mr. Hosmer)

is the stronghold of independent liberal action, as witness the fact that half our country -- or the southern segment of our country -- wants to deprive it of jurisdiction today. But we have an independent Supreme Court, and it may be that some day one of these Micronesians will get hold of a smart lawyer who will come up and say: "Wait a minute -- maybe that old man Hosmer was right -- maybe you have had a right since 1952 to jury trials. We are going to strike down this decision you have made, granting these acres and acres of coconut land to So-and-So, because he did not have a right to jury trial." It may happen.

I think I can end my remarks with a bit of plagiarism from a man who has written a book about this. I have forgotten the name of the author, but the book is called "Paradise in Trust". The author ended his book with these remarkable words, and they have to be listened to twice before one can get the actual meaning:

"No country could govern the Trust Territory any better than it is being governed today, except possibly the United States of America".

Mr. KIANG (China): I must say that I was a little puzzled by the opening remarks of Mr. Hosmer. First of all, he did not recognize himself as a petitioner. In the second place, he said that he had been subpoenaed by the Council. I was rather confused by this because the Council has never subpoenaed a petitioner. I think I can just ignore those remarks, and I still consider Mr. Hosmer as a petitioner, since the Council has no competence to listen to any man appearing before the Council who does not consider himself as a petitioner.

I would like to make one more comment before I put one or two questions to the petitioner. I myself look forward to learning some common law from the petitioner because I have myself been trained in common law. I was a student of Dean Roscoe Pound, who is a very good jurist and I think he embodies what the petitioner will think to be the common law.

The Council is now dealing with this petition, I would say, within the framework of rule 81 of the rules of procedure of the Trusteeship Council, of which I suppose the petitioner is also aware because he is dealing with a subject which falls within the terms of that rule.

I would like very much to know what the petitioner was referring to when he said that the people of Micronesia have been deprived of a basic right guaranteed to them and vested in them by the Trust Territory Code. All that I have followed so far shows that all the petitioner has referred to is the so-called "due process". Could the petitioner be more specific and tell us what are the provisions of the Trust Territory Code that really have been violated. If he cannot, then of course the petitioner has no right to say that the Micronesian people have been deprived of a basic right guaranteed by that Code. I should like to know from the petitioner, first of all, what are the provisions of that Code that have been violated.

The PRESIDENT: Before I call upon the petitioner, I think it is necessary for me to clarify the position concerning the appearance of Mr. Hosmer before this Council and the character of the document which he addressed to the Secretary-General. The petitioner, in his opening statement, said that this Council had dignified that document as a petition. Under rule 79 of the rules of procedure of the Trusteeship Council it is stated:

"A written petition may be in the form of a letter, telegram, memorandum or other document concerning the affairs of one or more Trust Territories or the operation of the International Trusteeship System as laid down in the Charter."

Therefore, rule 79 answers the question of whether the document is or is not a petition. It is a petition. With regard to the second question regarding the appearance of Mr. Hosmer before the Council, Mr. Hosmer in his petition to the Secretary-General did request to be allowed to appear before the Council, and on page 7 of document T/PET.10/35 the following is recorded:

"Mr. Secretary-General, you may advise the Trusteeship Council that I would like to appear before them to give any and all testimony I have regarding the above matters."

I think the question is then settled, the document is a petition and Mr. Hosmer is a petitioner. He may now answer the question.

Mr. HOSMER: I have a copy of the Trust Territory Code here. I assume that every member of the Council has a copy or has access to a copy. They cannot have wanted me to send it back because I had to pay \$5 for it. I figured that I was even with them because I paid \$5 to sue Will Goding in the district court of Guam out of my own money, so I did not send it back to them.

I am referring to the bill of rights which is in the Trust Territory Code; I am not speaking of our Bill of Rights. I am speaking of chapter I of the laws and regulations of the Government of the Trust Territory of the Pacific Islands. In section 4 of that chapter, it is stated that "No person shall be deprived of life, liberty or property without due process of law".

Mr. KIANG (China): I would like to ask the petitioner whether he would say that due process of law equates to a jury trial system.

Mr. HOSMER: Due process of law, in the United States interpretation of it, implies a lot of things. It implies hearing; it implies other things, but it also implies due process of law according to the code in which the words are said. And I say that a logical, reasonable interpretation of it was that these people have now, and have always had, a sense that the code was enunciated by Elbert Thomas at the behest of President Harry Truman. They have a right to jury trial.

I do not know what the Government would do at Washington if some brilliant, two-eyed international lawyer just stepped up in the Supreme Court and said: "You have just violated these people's rights there. You must give this land back; you must retry these cases." That is what I tried to explain to Mr. Goding, and he said that the people were not ready for jury trials. I take the position that no one can say that a people are not ready for a thing to which they have a legal right. You cannot say they are not ready. You cannot have, for instance, an anthropologist say that. Somebody might say that I am not mature enough to vote or to speak before the Trusteeship Council. But I am here.

The PRESIDENT: I think that what the representative of China wished to ascertain from the petitioner was whether due process of law is satisfied only by jury trial.

Mr. HOSMER: No, it has other elements, but I would say that one of the elements upon which you could base it is the right to jury trial, particularly when the common law is adopted.

Mr. KIANG (China): I can very well understand the answer given by the petitioner. I do not think that there is any point in pursuing my immediate question. I shall come to the second point.

(Mr. Kiang, China)

I think that the petitioner alluded to some comment by the Administering Authority to the effect that the people are not ready. In my opinion, there is a great deal in the view of the Administering Authority and I am sure that the petitioner is aware of some of the articles of the Trusteeship Agreement and is well versed in such things. May I invite his attention to one of the provisions of the Trusteeship Agreement. Article 6, paragraph 1, states: "... shall give due recognition to the customs of the inhabitants in providing a system of law for the Territory". If you are going to discuss the points which you have raised within the terms of what I have just read, I must say that it would be difficult for the Council to proceed to talk about it because, as you know, the question of whether the Micronesian people would like to have a jury system is a very important one.

Since the petitioner has advocated this kind of system, I should like to hear more from him because he has been in the territory, I believe, for some years. I think that I had the pleasure of meeting him in Micronesia several years back. I should like to know whether he ever made a survey or tried to find out how the people of Micronesia reacted to that kind of proposal from the petitioner -- that is, a proposal to adopt the jury system.

Mr. HOSMER: Of course, I am not an anthropologist; I cannot look at a people and tell them when they are ready for certain political development. I am a lawyer. If they have the legal right, or if there is a reasonable ground to say that they have the right, then they have it.

In a second letter to President Kennedy, in reference to what had been written about the Department of the Interior studying jury trial and would grant it as soon as it was seen that the policy considerations were right, I said that there was no policy in this. If they have the right, they have it; if they do not have it, they do not. It should be interpreted by some court, or if the United States wants to do it, I have an excellent way out for it. All it has to do is for President Kennedy to make a decision; Mr. Goding here is the High Commissioner and he can write it up and it can be said that there shall be no jury trials in the Trust Territory. He has the absolute right to say that because he is operating under a treaty power, under a full delegation

(Mr. Hosmer)

of powers to him as a High Commissioner. He has the power of life and death over these people according to the unrestricted terms of the treaty of power of our Government, and the treaty of power is the supreme power of our law. It can be said, if they do not have the right to jury trial, then put the matter at rest. But it is a question now and a grave question in my mind, for I believe that they have the right. You say that they are not ready for it. When are they going to get ready? We have had them for sixteen years. When are they going to get ready? When are we going to jerk them into the twentieth century? I say that we should have jerked them in 1952 when Harry Truman was President of the United States. He could have made a decision. Let them into the twentieth century. Let them know what the world is about. Are you going to keep them in a strategic area so that you can hide your mistakes?

Mr. KIANG (China): Before I proceed to ascertain certain facts from the petitioner, I should like to make it very clear that I am not arguing with him whether the jurisdiction should be so or not. That is beyond the competence of the Council. May I ask the petitioner whether he could tell us what cases he saw in which there was miscarriage of justice or chicanery.

Mr. HOSMER: If the representative of China will recall, the particular one that I saw was where perjured evidence was used by my Government. I ordered a full transcript immediately after that case was tried. I went up to the Associate Justice of the High Court trying the case and, as Public Defender, I said::

"If Your Honour please, I just never saw this happen in any court under that flag over there. I want to ask at this time that the witness, Tkel -- who has testified falsely for the Government and returns to testify again and is vouched for by the Government -- be summarily punished for contempt. I want to ask that the Government of the Trust Territory be reprimanded, and I want to ask that this defendant, my client, be discharged."

To understand that miscarriage of justice you would have had to practise law as long as I have in trial work. It is just never done.

(Mr. Hosmer)

If in my career in public prosecution I had to base my prosecution on perjured evidence, I just would not prosecute. It is so foreign to our concepts of justice that it is relatively horrifying. It is horrifying to me. I do not know if there is a transcript, as I ordered. I put up my cheque for \$72 and ordered a transcript. If there is a transcript existing, I should like the members of the American Bar Association to read it. It was just offensive to my sense of justice.

Mr. KIANG (China): I have another point of fact which I would like to find out from the petitioner. Did he start advocating the jury system after the case of The Trust Territory of the Pacific Islands vs. Kalustus Ngirailengelang?

Mr. HOSMER: I take it that it was that night or the next night after that we, the two Micronesian assistants and I, worked all night getting up this brief.

Mr. KIANG (China): May I infer from what has been said by the petitioner that he had never advocated the jury system before that case?

Mr. HOSMER: For the Trust Territory? I had no thoughts about it one way or the other. I saw an immediate necessity for some relief from the repressive acts of the Government and I determined to find a basis upon which I could be something more than a man who was down there as public defender to pat my little brown brother on the back and say, "That is the American flag, but you must go in there and plead guilty, because you have no rights, there is no defence for you".

Mr. KIANG: I have finished my questioning, but I would like to place on record one remark, one observation, of my delegation.

(Mr. Kiang, China)

It is perfectly within the right of a petitioner to advocate what he himself believes in, but it is quite a different matter that what the petitioner believes to be right must necessarily be accepted and imposed upon the people of the Trust Territory as a part of the existing system of laws for that territory. Unless the petitioner has shown to the Council convincing reasons that the present legislation and administration of justice are incompatible with the provisions of the Charter of the United Nations and of the Trusteeship Agreement, the Council is not in a position to express its view on the matter, other than to take note of what has been observed by the Administering Authority and to have this so communicated to the petitioner.

Mr. CORNER (New Zealand): I remain confused as to precisely what the petitioner is arguing. Is the petitioner arguing that jury trials are desirable and should be introduced by the Administering Authority? Or is he arguing that jury trial should now exist in the Trust Territory as of law, that is, that a United States law is being broken by its denial? If he is arguing the latter, that jury trial should exist by law and that the law is being broken, then that presumably is a matter for the United States Supreme Court or for the normal judicial authorities to decide; it is not a matter that can be decided by this Council, and it seems clear to me that rule 81 of the rules of procedure makes that clear. Or is he arguing that jury trial is merely desirable in the territory? If so, then of course the petitioner is entitled to express this opinion, and one would like more of the thinking upon which he bases it. It is also a subject on which members of the Council may have ideas and may wish to express them.

But ultimately he would be arguing that this is a political decision, as to whether jury trials should be instituted or not, and ultimately this is a matter for decision by the Administering Authority, preferably -- since political progress is now advancing so far in the Territory -- for decision in conjunction with the parliament of the Territory.

It is precisely this that I would like the petitioner to clear up: whether he is arguing that an existing law is being broken, or whether he is expressing his opinion that jury trial should exist in the territory.

Mr. HOSMER: In answer to the representative of New Zealand, I am of course a lawyer and I will speak of the law. The difficulty is in bringing these matters to a conclusion by having some court of competent jurisdiction pass on them. Now as I understand it, the International Court of Justice at the Hague is only for States, that is only for the Member nations of this great United Nations. It is possible that if I had known about the dismissal of the case against Goding in Guam -- a case that I filed against Goding in Guam in the nature of a habeas corpus; I would have brought it, I guess, if the man's money had held out, the man who was over on Ponape in jail for the rest of his natural life, to the Ninth Circuit Courts of Appeals and the Supreme Court -- it is possible, I will say, that an original motion for certiorari could be brought in the Supreme Court of the United States to get a decision on this question. I would think it would be to the Government's advantage, to my Government's advantage -- I am just speaking to them as a taxpayer now, just kind of talking person to person with them -- it would be to their advantage to get this passed on before there are more and more years of mistakes. However, if it is right, why then it would be settled once and for all. I think the Trusteeship Council could say to them: "Well, United States of America, get this passed on by some law, get this passed on by the Supreme Court. Bring up the Mendiola case, bring up the Baules Sechelone case, bring up the Kalustus Ngirailengelang case, and let us get them to the Ninth Circuit Court of Appeals in San Francisco, or let the United States Supreme Court pass on them, so that you will decide for yourself whether you will have jury trials."

Now, as far as whether or not it would be beneficial is concerned, I think no man from New Zealand should ever question the benefits of the right to trial by jury. Those are the things that keep you and me free -- the fact that we have to be convicted by a judgement, a unanimous judgement, of twelve of our fellow citizens. As for the benefits of trial by jury, this is not a late thing, this is not a recent invention; it is a rather old one and one that has the process of freedom in it. It works. It is a funny thing, but it works and it does not look as if it works. But it works. It works for me and it works for you, I am sure.

Mr. CORNER (New Zealand): I was certainly not questioning the value of the jury system, but its application in this case and, particularly, the grounds on which the petitioner was arguing. He has now said that he is dealing with this as a legal matter and he admits that this is a case that could be dealt with through the due legal processes that exist but which were not, for various reasons, fully utilized. In these circumstances it seems to me that rule 81 does apply to this situation. It says:

"Normally petitions shall be considered inadmissible if they are directed against judgements of competent courts of the Administering Authority or if they lay before the Council a dispute with which the courts have competence to deal."

Mr. YATES (United States of America): May I first point out to the petitioner that I too am an American lawyer and that I too want our system of justice to be the best in the world. That may sound chauvinistic, but I think nevertheless that this is our goal, that we glory in a system of justice which provides equal justice for each person under the law. When the petitioner comes before this tribunal and presents the charge that our system of justice in the Trust Territories is a repressive one, I feel hurt and I feel that it should be corrected. I feel too that we should have some facts to sustain this position.

First of all, let me next indicate what my role is here. When the petitioner referred to the Government as the Government, I do not know that I qualify for that part of Government to which he has reference. If, as he has indicated, he wants to make some complaint as a taxpayer, I think probably he should address me in a role that I once occupied, and that was as a member of the United States Congress, a role which I no longer occupy. I am now a representative to the Trusteeship Council and represent our Government in this Council. I am interested in the proper conduct of the affairs of the Trust Territory. I happen to believe that we have a good system of justice in the Trust Territory, and I believe that we have a good system of justice even though there is not now present in the Trust Territory a right to a trial by jury. As a matter of fact, I would say that there are many governments and many countries in the world which do not accept the necessity of a trial by jury as being a necessary part of the provision of a fair system of justice. As a matter of fact, I think two or three of the members of this Council are representatives of nations which do not have the jury system, and I think they might dispute with the petitioner the fact that the jury system is necessary for the fair apportionment of justice.

In response to the question of the representative of China, the petitioner read from Section 22 of the Laws and Regulations Applicable in the Trust Territory. Did he read the whole section?

Mr. HOSMER: I told the representative of the United States that I would not read it all and that he could read it all.

Mr. YATES (United States of America): Would the petitioner please read into the record the entire section 22?

Mr. HOSMER: Yes, I shall be glad to. As long as the representative of the United States has asked me to read Section 22, I shall read it as it existed at first and then as it was amended.

I am reading Section 22 as it first existed:

"The common law of England and all Statutes of Parliament in aid thereof in force and effect on July 3rd, 1776, and as interpreted by American decisions, are declared to be the law of the Trust Territory of the Pacific Islands, except as otherwise expressly provided in Section 24 hereof or by the laws of the Trust Territory as now or hereafter established by legislation, regulation, executive order, proclamation or recognized local custom: provided, however, that no person shall be subject to criminal proceedings, except as provided by the written laws of the Trust Territory or recognized local custom when the latter is not inconsistent with such written laws: provided further, that nothing in this section shall be construed so as to repeal, alter, change, enlarge or amend the procedures established on October 1st, 1952, for determination of questions of fact and law by the courts of the Trust Territory, including the pleadings, practices and procedures prescribed elsewhere in the Laws and Regulations of the Trust Territory or in rules promulgated by the Chief Justice from time to time as prescribed by Section 178."

Now that was Section 22 as it existed, and I contend it gave a valid right to jury trials then that became vested in the people of Micronesia. But on May 11th, 1959, it was amended by Executive Order No. 76, which states as follows, and I quote it in its entirety:

"The rules of common law as expressed in the restatements of law approved by the American Law Institute, and to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Trust Territory in cases to which they apply, in the absence of law applicable under Section 24 hereof; provided, that no person shall be subject to criminal prosecution except under the written law of the Trust Territory or recognized local

(Mr. Hosmer)

customary law not inconsistent therewith as amended by Executive Order No.76 dated May 11th, 1959."

I hope that answers the representative of the United States.

Mr. YATES (United States of America): I suggest that it does not completely answer me, because I have a copy of it before me -- I do not know what the petitioner was reading from -- and there was a part of it that was still not quoted. I shall proceed to read it. This is the way Section 22 appears in the Laws and Regulations Applicable to the Trust Territory:

"The rules of the common law as expressed in the restatements of the law approved by the American Law Institute, and to the extent not so expressed as generally understood and applied in the United States, shall be the rules of decision in the courts of the Trust Territory in cases to which they apply. In the absence of written law applicable under Section 20 hereof or local customary law, applicable under Section 21 hereof to the contrary, and except as otherwise provided in Section 24 hereof; provided that no person shall be subject to criminal prosecution except under the written law of the Trust Territory, or recognized local customary law not inconsistent therewith."

Now that is the full Section 22.

(Mr. Yates, United States)

The petitioner has suggested that the system of justice in the Trust Territory is repressive and, at the same time, the Government is well-intentioned. I gather from what he previously said that he thought the system of law was repressive, one, because it failed to provide for a trial by jury. Is that correct?

Mr. HOSMER: In answer to the representative of the United States, if a full transcript of that case, of the Trust Territory of the Pacific Island vs. Kalustus Ngirailengelang is available, I can show you how it is repressive. I have never heard of a Government that uses perjured evidence to obtain a conviction; I have never heard of that. That is offensive to me, as I am sure it would be offensive to you.

Mr. YATES (United States of America): Is that the basis upon which the petitioner charges that the system of justice in the Trust Territory is repressive?

Mr. HOSMER: That is, of course, one of the elements of it.

Mr. YATES (United States of America): What are the other elements?

Mr. HOSMER: The land case -- I can cite that to you, where the Land Title Officer just changed his absolute discretionary hearing on word from headquarters, without any additional hearing. He decided it one way for my client who was the petitioner; and then, without any hearing, because headquarters said to do the thing a certain way -- that this was wrong -- why, he just arbitrarily, without any hearing whatsoever, just changed his mind and decided for the Government. They were paying his salary, I guess.

Mr. YATES (United States of America): Are there any other elements upon which the petitioner bases his charge?

Mr. HOSMER: Those are two of the elements that were offensive to me. I tried about five cases down there for the Government, and I think four of them had elements of repression in them.

Mr. YATES (United States of America): Will the petitioner tell the Council what elements of repression were in those cases?

Mr. HOSMER: If the President please, I am going to have to spell this name. They have nine languages down there, and I did not become a master of any one of them. It is: R-d-i-a-l-u-l T-o-r-u-a-l -- Rdialul Torual, Plaintiff, vs. The Trust Territory of the Pacific Islands. It is Alien Property Custodian and Charles B. Hughes, District Land Title Officer. This is Civil Action No.152; Baules Sechelone vs. Trust Territory, Civil Action No.190; and then the case to which I have referred.

Mr. YATES (United States of America): With respect to the last two cases to which you referred, what were the elements of repression in those cases?

Mr. HOSMER: The fact that no opportunity was granted to test the right to trial by jury in the case 190; the fact that the Land Title Officer recalled without notice a determination of ownership and release of Japanese lands.

Mr. YATES (United States of America): Then, I take it that there are three instances of repression in the system of justice to which the petitioner is referring: one was the land case and the recall without notice; the second related to the use of perjured evidence in order to obtain a conviction; and the third relates to the fact that the trial by jury was not accorded. Do I state the petitioner's view correctly?

Mr. HOSMER: It would seem that your statement about the jury trials is somewhat shortened. I asked the opportunity to test that case, which was a land title case, in the Appellant Division of the High Court, and I asked time in which to test that.

Now, when you interject a question like this -- I am sure the representative of the United States is familiar with these things -- most courts grant you time in which to test it in the Appellant Division, a few days to seek a writ of prohibition in order to get that tested before you go to trial. Now, surely, in a land title case, even more than in a criminal case, those people down there, in my opinion, are absolutely entitled to a trial by jury, because you will notice Section 22, to which you and I have both referred extensively, Mr. Yates, says: Common Law as determined by the American Law Institute.

In my brief which I filed, of which I sent a copy to Will Goding as soon as I filed it, and of which I sent a copy to Frank Barry, who is solicitor to the Department of the Interior, who I thought was then my boss -- in those briefs I set out the restatement of law wherein it says that "... traditionally and forever, going back for centuries, the memory of man runneth not to the contrary, land title actions have always been the subject of jury trials".

Mr. YATES (United States of America): In the letter which has been considered the petition before the Council, the petitioner stated with respect to the case that there was a finding of guilty for the defendant based upon perjured evidence. I quote from the petition:

"In fairness, the Court did say that in finding the defendant guilty, it did not take into account anything the witness Tkel said." (T/PET.10/35, page 10).

The witness Tkel was the witness who committed perjury, was he not?

Mr. HCSNER: Yes, but it stood there, and I know it would be as offensive to you if you were in my position as it was to me. It stood there vouched for and unrecalled by the Government of the United States.

Mr. YATES (United States of America): I am sure that the petitioner as a good lawyer will recall the rules on perjury and recantation. The New York Court is apparently the minority rule, and this is for a system of courts in the United States. I assume that the argument of the petitioner is based upon an application of this type of ruling to the Trust Territory cases as well. But the New York rule provided that although a witness may have intended to testify falsely, his subsequent retraction or correction, if it is made promptly and before harm is done, will absolve him of having committed a perjury. Of course it is so important that the court obtain the whole truth that a witness who has testified falsely should be encouraged to come forward and testify as to the whole truth. The Federal rule says this: regardless of what his later conduct is, a witness who willingly gives testimony which is false and which he knows is false is guilty of perjury, and he might have been held for perjury before the Court. But the fact still remains that in that case the Court did state and the petitioner concedes that the perjured witness' testimony was not taken into consideration by the Court.

(Mr. Yates, United States)

Before we get to the question of a jury trial, may I ask the petitioner how long he was in the Islands as Public Defender?

Mr. HCSMER: I want to say, in answer to the representative of the United States, that I have set that out because I wanted to make a fair statement, and that is what actually happened. The Judge said that that was so. I was there from 9 October. I do not know what time I arrived. That was the time I left, 9 October to about 9 December. The High Court asked me to come right to Koror to clear up the docket there. They had had no Public Defender since May. They had fired the Public Defender in May, a fellow named George W. Grover, a distinguished lawyer from Springfield, Ohio. There was a great backlog of cases that had to be disposed of at Koror in Palau and so we went there.

Mr. YATES (United States of America): It was approximately a month or five weeks, was it not?

Mr. HCSMER: About two months roughly, if my memory serves me correctly. I could look that up if the representative wishes me to do so.

Mr. YATES (United States of America): As I understand it, the basic purpose of the petitioner's asking to be heard before the Trusteeship Council is to make a plea for a jury system for the Islands. Is my understanding correct?

Mr. HCSMER: Yes. I wrote a letter which has now become a petition. I did not want to let die a-borning or abort, so I followed it here to give my testimony at the behest of the Secretary of this Council.

The PRESIDENT: I call on the representative of New Zealand on a point of order.

Mr. CORNER (New Zealand): One keeps returning to this point about whether the petitioner was brought here at the behest of the Secretary. His letter plainly says:

"Mr, Secretary-General, you may advise the Trusteeship Council that I would like to appear before them to give any and all testimony I have regarding the above matters." (T/PET.10/35, page 7)

This was a request of the petitioner. He was not summoned here by the Council.

The PRESIDENT: I think that that fact was pointed out by the President just before the question of the representative of China was put to the petitioner.

Mr. HCSMER: I am very sorry and ask your indulgence.

Mr. YATES (United States of America): May I ask the petitioner why he did not go to the American Congress, why he did not petition the American Congress in order to obtain what seems to me at least to be a much more effective way of obtaining the redress he seeks? First, does not the petitioner recall -- I am sure that he recalls -- the fact that the jury systems which are now present in the Virgin Islands and in Guam were introduced only as a result of Congressional legislation which was predicated upon obtaining the consent of the people of those territories to the use of the jury system? And would not the American Congress still have to be consulted for the purpose of instituting the jury system? Therefore, I ask why he did not go to the American Congress and ask for its help.

Mr. HCSMER: I have been my Party's candidate for the American Congress and I do not intend to reflect on the American Congress. I did not want to have to register as a lobbyist for the people of Micronesia before the American Congress. Nor do I think that a lawyer is in a very good position, when he has a remedy somewhere, to seek the aid of Congress in a legislative matter when it is a matter of law. That goes back to the question of the representative of New Zealand. Here is the peculiar situation.

(Mr. Hosmer)

We have these Islands by right of conquest, and to some extent at least that is our rough position in them, I think; it is delegated under the treaty power of the Federal Constitution . If the representative will remind himself, the treaty power is coexistent. It says that the treaty shall be the supreme law of the land. In reference to the treaty power, Harry Truman, as President of the United States, told Elbert Thomas as his High Commissioner he was given full power by the American Congress. He said, "You promulgate a Trust Territory Code." And he did so and that is what we are arguing about. I think that probably it is legally out of the hands of the American Congress. That is, they of course have supervising control of it and could recall any delegation they had made through the President to the High Commissioner. But it would be a question in my mind. I think that the answer is either President Jack Kennedy or Will Goding. I think they are the ones who can say whether or not there is a right to jury trial in the Trust Territory or not. If they say not, I do not think there is anything anybody can do to them.

Mr. YATES (United States of America): In the petition it is alleged somewhere that as a result of the intervention of Senators Symington, Long and Kerr, the petitioner was given the opportunity to serve as a public defender. Does my memory serve me correctly?

Mr. HOSMER: Yes, that is correct. Senator Kerr has died. I acknowledge that I was in my position because of a political appointment. I was Senator Kerr's campaign manager from Missouri when he ran for President of the United States in 1952, and I do not know whether the representative of the United States will say that his appointment is a result of political influence or not. But mine was.

Mr. YATES (United States of America): The representative of the United States will say that if it means anything to the gentleman. But the purpose of my question was not to reflect upon the petitioner in any way. The only purpose of my question was to ask why the petitioner did not bring this matter to the attention of his friends, Senator Symington, Senator Long and Senator Kerr, in order to correct this. They are very influential members of the Senate.

Mr. HCSMER: I brought it to the attention of a slight acquaintance of mine, a fellow named Kennedy, and I thought he was in charge of this part of the Government. I thought he could do it by an Executive Order.

Mr. YATES (United States of America): Did you ever bring it to the attention of three Senators whose names I mentioned?

Mr. HOSMER: I am well acquainted with the late Senator Kerr. Senator Kerr is deceased. I am well acquainted with both of the Senators from my State and I brought it to their attention. But the Congress has so many things to concern itself with. I do not know what chance of passage there would be and how long I would be occupied in Washington lobbying for this legislation. I do not know what legislation you would write. For instance, how would you write it? Maybe you would say: In regard to the Trust Territory, we legislate now that when we adopted the common law we meant for it to say also "jury trials". I do not know what legislation you would write.

Mr. YATES (United States of America): The petitioner has stated an affection and an esteem and respect for the Supreme Court of the United States, which I share too. May I read a quotation from one of the decisions of the Supreme Court of the United States in the case of Dorr vs. The United States (195 US 138, page 149), with which I agree, and I ask the petitioner whether he agrees with it as well. It reads:

"If the right to trial by jury were a fundamental right, which goes wherever the jurisdiction of the United States extends" --

And I may say before I read the quote that the question before the Court was whether or not there existed a right of trial by jury in the Philippines. I may say that the inherent law of the Philippines at that time contains the same provision as part of its basic law, as that to which the petitioner alluded in section 22. This is what the Court says, and that was the question it passed upon, as to whether there was this inherent right of trial by jury:

"If the right to trial by jury were a fundamental right which goes wherever the jurisdiction of the United States extends, of if Congress, in framing laws for outlying territory belonging to the United States, was obliged to establish that system by affirmative legislation, it would follow

that no matter what the needs of the people, trial by jury, and in no other way, must be forthwith established, although the result may be to work injustice and provoke disturbance rather than to aid the orderly administration of justice. Again, if the United States shall acquire by treaty of cession territory having an established system of jurisprudence where jury trials are unknown, but a method of fair and orderly trial prevails under an acceptable and long-established code, the preference of the people must be disregarded, their established customs ignored, and they themselves coerced to accept in advance of incorporation into the United States a system of trial unknown to them and suited to their needs. We do not think it was intended, in giving power to Congress, to regulations for the Territory to hamper such a situation with this condition."

The Court rules, as I am sure the petitioner recalls, that there was no right of trial by jury in the Philippines under a system of law which is comparable to the one before us now. Now does the petitioner agree with that decision of the Supreme Court?

Mr. HOSMER: That is proof positive that the representative of the United States has not read my brief. I cited that case on page 3 of the brief that I filed at Koror. I say that in reference to the Dorr vs. The United States case, this is not a species of law like that one. This is like Senator Huey Long used to say about himself. This is sui generis. This is a kind of strange or new species of law here. This is an international case where our holdings in Micronesia -- I do not want to say our holdings, maybe that is the wrong thing; I ask that that be stricken -- our position in Micronesia is that we are trustees under a treaty. It is sui generis. It is just a thing of itself. And the President has full power. There is a statute of Congress that gives the President the full power over the Trust Territory. Maybe that goes back to the days when these were strategic things, before Will Goding started the tourist trade and all that. But there is full power over that and the High Commissioner has the full power.

Mr. YATES (United States of America): May I read another quotation from the Supreme Court. It is obvious that the petitioner is very familiar with it. The Court also said this:

"Congress has thought that the people like the Filipinos or the Puerto Ricans, trained to a complete judicial system which knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions, should be permitted themselves to determine how far they wished to adopt this institution of Anglo-Saxon origin and when."

Does the petitioner agree with that statement by this Court?

Mr. HOSMER: I do not. I do not think that we should cynically limit freedom to those people that we think, individually think, may be ready for it. I am afraid the world is moving faster than that.

Mr. YATES (United States of America): May I thank the petitioner for his answer to my questions. I have no further questions at this time.

Miss BROOKS (Liberia): When a lawyer hears legal terminology of due process of law and trial by jury, and hears comments made by other lawyers thereupon, giving their interpretations, he is tempted to enter into a discussion and throw out some light on the question in the concept of his own thinking. However, in view of the lateness of the hour and in view of the fact that much has been said in connexion with the petition before us, I would like to say that the Council has to consider the following: First, that the question of jury trials, for people for which the Council must have deep concern, has been raised. The question arises then as to whether or not the people in these Territories have not been at a disadvantage by not having the right of trial.

Some have mentioned the question of preparedness. If that was the consideration in the past -- although I do not say that I fully agree with that concept -- I would ask whether or not, in view of the rapid pace of development in the Trust Territory of the Pacific Islands at this time, the Administering

Authority would, in its future plans for the Territory, consider this question which has been raised, the question of jury trial, which in many democratic institutions is considered one of the inherent rights under the law. Since this is the principal characteristic in the metropolitan country of the United States, and so greatly believed in, an examination of the particular question might throw light on it and then we could properly have a report on this question some time in the future.

Mr. YATES (United States of America): I appreciate and acknowledge the wisdom of the statement just made by the representative of Liberia. I am sure that she will recall that in the observations of my Government on the petition it is stated that:

"... whenever and wherever in the Trust Territory it develops that the jury system will constitute a useful fact-finding device, the United States and the Government of the Trust Territory propose to establish that system as an integral part of the administration of justice".

(T/OBS.10/8, page 3)

I would point out, too, that we believe that the people of the Territory should participate in the reaching of a decision on this matter. We do not think that we should force on the people of the Territory a system of justice that they may find alien to their customs and traditions and that may be disturbing to them. We want to take into consideration the views of the people of the Territory.

As the Territory moves towards the organization of a legislature -- and during the course of our discussion here we have pointed out that this is happening -- I would suggest that this might be a very good subject for consideration by such a legislature.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): Before asking one or two questions which I have in connexion with Mr. Hosmer's petition, I should like to make the following observations.

Under the rules of procedure of the Trusteeship Council, Mr. Hosmer is fully entitled to appear before the Council, as he was fully entitled to submit his petition. Rule 77 states specifically that:

"Petitioners may be inhabitants of Trust Territories or other parties".

This situation is also covered by rule 79, to which the President referred. I would say that the Soviet delegation fully agrees with what the President said in this respect. The present case falls under rule 81, and I agree with the remarks made by the representative of New Zealand, except that I would prefer that all of rule 81 should be quoted, and not merely the first sentence.

Secondly, I think that the petitioner was fully entitled to come to the Trusteeship Council rather than to the Congress of the United States. We agree entirely with his interpretation of the position. There are two sides involved in a determination of the status of the Trust Territory: on the one hand, there is the United States, and, on the other, there is the Trusteeship Council.

As a further preliminary remark, I should like on behalf of my delegation to say very frankly that we congratulate the petitioner on the civic courage he is showing; we are fully appreciative of that courage.

In one of the replies that he has given today, the petitioner has said that the basic purpose of his petition is to raise the question of the system of justice in the Territory, the question of jury trials, and that this is his purpose in coming before the Trusteeship Council. I agree that that is the main purpose; it is apparent from the petition. At the same time, I shall not be discovering America -- as we say in Russian -- if I observe that, in addition to dealing with the establishment of a jury system in the Trust Territory, the petition refers to other questions; and, although the petitioner has said that he was in the Territory for only a month or so, these other questions have a certain interest for us.

I should particularly like to draw the attention of the Council to two passages from the petition. I have in mind not only the question of the juridical system in the Territory, which is the main subject of the petition, but also the situation of the population as the petitioner saw it. These are the passages from the petition:

(spoke in English)

"I visited Ngerdmal on the biggest island in the Trust Territory. That was where the Japanese mined bauxite. I almost fell through the floor of the community school while visiting it. It was the poorest equipped school I have ever seen. Any Ozark Mountain school would look like a university compared with it, and this after sixteen years of American rule out there". (T/PET.10/35, page 4)

"At Krcrcr the United States maintains, at the cost of the United States taxpayer, a power plant, a telephone system, a water system, a sewage system and a road system. I made the mistake, however, of visiting in the home of William O. Wally one Saturday afternoon. He had no electricity in his home, no telephone, no water, no sewer and no road and was living on that beautiful island in squalor while our personnel were living in comfort with all of these modern conveniences and attending a segregated community club, to which I will refer in more detail later, if you desire my testimony on this and other matters". (Ibid., page 5)

(continued in Russian)

Those two comments by the petitioner introduce a new note into our discussion. We must admit that we have never heard of the existence of a segregated community club, as he puts it. We should like the petitioner to go into more detail on this point, particularly since he has expressed a desire to do so.

Unfortunately, the observations of the United States Government as the Administering Authority (T/OBS.10/8) are confined to the question of establishing the jury system in the Territory.

I should like to ask the United States representative whether he could comment, on behalf of his Government, on the matters to which I have just referred.

My last question to the petitioner is the following. He does not go into any detail as to why it was proposed to cease the activity in which he was engaged. I should like to hear the petitioner's comments on this point.

Mr. HOSMER: I do not know whether the representative of the Soviet Union is asking me or is asking the representative of the United States. I am certain that any of those things to which I referred have been corrected. I am certain about that because the United States Government is very, very sensitive to criticism. They do not like the critic, but they are very, very sensitive to criticism. I will venture to say that the floor of the school at Ngerdmal has been well fixed by now. And I will ask the representatives of the Soviet Union to go down there and look at it themselves. I have said what I have said. I have written what I have written.

The PRESIDENT: There was another question about electricity, and so on, in the home of Mr. William Wally. Would the petitioner care to comment on that?

Mr. HOSMER: May it please the President, what I have written I have written -- what I have seen with one eye, I have seen. I imagine that the sensitive American Government and American Administration has corrected all those things. The segregation in the Koror Community Club was there. On 13 November, they were still trying to decide whether to desegregate the Club. John Nurkhard, who was a Micronesian, and William O. Wally came in there as my guests, and they were seemingly well received. But on that day they were still trying to argue about the question of letting the Micronesians into the Koror Community Club -- after President Kennedy, in March, had desegregated the entire federal establishment. But I am certain that those things have been well corrected. As I say, the United States does not like its critics -- but it agrees with its critics at least by fixing what is wrong. Probably they do not like me -- but they have fixed the floor of the school at Ngerdmal, I have no doubt.

Mr. YATES (United States of America): I think that the Council should know that the petitioner is correct in his estimates that such wrongs as he found have been corrected and that the United States did take seriously the criticisms that he advanced. I think he should know, too, that we are grateful that he did show this interest in the jury system. It is not that we do not agree with him

(Mr. Yates, United States)

on the worth and the value of the jury system. As a matter of fact, I do not know whether he knows this, but, going back to approximately 1950 or 1951, officials of the Department of the Interior of the United States Government, in the Legal Section, and Assistant Secretaries have been making inquiries as to how the jury system might be put into effect, and this has gone along all through this time. They have asked individuals whom they consider to be worthy individuals -- and, I may say in passing, probably not political appointees like the petitioner and myself -- although I would say that probably they had some basis for the appointment. One of those whom they asked was Judge Albert Maris -- and I am sure that the petitioner recognizes that name as the name of one of the outstanding jurists in the whole American system of jurisprudence. He was Senior United States Circuit Judge. He travelled through the Trust Territory in 1951, when he was asked by the Department of the Interior to study the judicial structure and to recommend methods of improving it, and he has followed the judicial system of the Trust Territory ever since. He is one of the most respected men in the United States on this subject. He is now Chairman of the Committee on the Revision of the Laws of the Judicial Conference of the United States; he is Chairman of the Committee on Rules of Practice and Procedure of the Judicial Conference. He was recently asked again for his opinion on the question of juries, as to whether the jury system should be put into effect in the Trust Territory. This question was addressed to him by the Department of the Interior. Again, let me say that my delegation is very much concerned with this question. This is what he said:

"I believe it would be unwise to try to engraft the jury system upon a clan or lineage-centred society in which the deep loyalty of the individual to his clan and all its members, as against all others, makes the system unsuitable and practically unworkable. Loyalty to family outweighs loyalty to State in many instances, and to secure an impartial jury in a small clan or a lineage-centred society in Micronesia would present some very great practical difficulties."

(Mr. Yates, United States)

I am sure that the petitioner himself knows that it would be extremely difficult, because of the geographical circumstances of the islands, to have a jury system in some of these places. That is one of the considerations in the matter. But the fact remains that this is under active consideration by my Government and, as we pointed out in our observations on the petition, we hope to put such a system into force and effect as promptly as possible. Territories such as the Virgin Islands and Guam, which originally did not have the jury system, now have the jury system by action of Congress and with the agreement of the inhabitants of those Territories. That is what I am informed by the lawyers for the Department of the Interior.

I, for one, want to thank the petitioner for coming forward and giving the Council the benefit of his thoughts. Perhaps it is attributable to the fact that I was a member of the United States Congress for fourteen years, but I would have thought that a better forum for redress of what the petitioner has in mind might have been the Congressional Committees originally. But that, of course, is something for the petitioner himself to decide.

Mr. HOSMER: I disagree slightly with the representative of the United States about Guam. I think that Guam got its jury trials by fighting for them, by voting and by action. I think that Mr. Failen, who was a distinguished attorney in Guam and who joined me in the suit against Mr. Goding, was responsible for that in 1956.

In closing, I want to say that I wrote a letter again to Kennedy, who I thought was in charge of this thing, on 19 February 1963 -- and let me see whether that does not answer you about courts and about the people. I am going to start with the second paragraph on the second page. The rest of it is just a letter -- a three-page letter. This reads:

(Mr. Hosmer)

"I do not want to work for your Government ever again -- but, instead of having secretaries write me letters, why don't you have somebody in the Department of your brother, the Attorney-General, tell me if I am wrong on the law?

"Of course, it might be that because of the indigenous clan system and ignorance of the Micronesian -- alas, after seventeen years of American rule -- that the jury system would work at first imperfectly. But that did not keep us from having to provide this basic right of freedom to people on our own frontier many years ago, when our people on our frontier were both clannish and ignorant. I could set up a jury system so that it would not cost the American taxpayer one dollar. I would make it an honour for a Micronesian to serve on his own jury system and to provide his own justice, without pay, but with pride.

"I think that, from the Micronesian defendant's point of view, American times out there look very little different from Japanese times or German times or Spanish times. These gentle people have seldom been anything throughout all their recorded history except pawns of world power."

A jury system would provide their own system of government. For instance, in connexion with land titles, they could not say: "Well, that's the big American Judge of the High Court who did that." No, that would be Joe down the street, or Joe in the next town, who sat on the jury and who gave him those things.

The PRESIDENT: Before I give the floor to the representative of the United States, who has just indicated that he wishes to speak, I want to point out that the representative of the Soviet Union was in the course of questioning the petitioner, and I hope that the representative of the United States does not intend to reopen this question with the petitioner before we have allowed the representative of the Soviet Union to complete his questioning. since we owe him that courtesy.

Mr. YATES (United States of America): I just want to make one statement before I yield the floor to the representative of the Soviet Union. In response to what the petitioner read, let me say that my delegation may believe that some of the people of Micronesia are clannish, but we certainly do not believe that they are ignorant.

(Mr. Yates, United States)

I am not accusing the petitioner of having said this. I think he alluded to the fact that some people charged this. I want him to know that my Government and my delegation does not have this view at all.

Mr. HOSMER: The point I really wanted to make that the people on our frontiers in Missouri had the right to jury trial very early. They had the clan system; that is to say, one family on the frontier would not find against another family. They were unlearned; perhaps the word "ignorant" is a bad word. They were unlearned and unlettered, yet they could listen to a jury trial and do substantial justice.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): I would like to say that if I am holding up the Council at this late hour I hope that the members will understand that this is not my fault. Of course, I understand the desire of the two lawyers to speak about the jury system. However, the questions which I raised had relevance to somewhat different problems, and since I have not received an answer to my question or, at least, the comments I asked for from the United States representative, I would like to ask two concrete and definite questions of the United States representative, since the petitioner, in his own way by expressing the hope that the situation had improved, has answered my question, and I am grateful to him for this. Therefore, the questions I would like to ask are as follows. Firstly, as is apparent, at the time referred to by the petitioner the situation in the region where he was was characterized by two circumstances. On the one hand, the local population lived in conditions which were different from those in which the Americans lived, the Americans who had positions in the Administration of the Territory. Secondly, there is the fact that there was, as I understood from the petitioner, a segregated club -- if this is wrong, I would like a clarification from the United States representative -- which did not admit members of the local population.

Therefore, my first question is whether the situation as between the local population and the officials of the Administration is as before, in the sense that the latter has electricity, telephones, water and so on. My second question is: what measures have been taken to put an end to the segregation in the club referred to by the petitioner?

Mr. SCOTT (United Kingdom): Am I to understand that we are reverting to questioning of the Administering Authority? I am rather oppressed by the lateness of the hour, I must admit, and I suggest that a better procedure would be to deal with the petitioner and, perhaps, continue any further questioning of the Administering Authority at some other time. If we do otherwise, I see no end to the process.

The PRESIDENT: It appears to the President that the two questions posed by the Soviet representative have arisen as a result of the explanations made by the United States representative on these petitions. I recall that the Soviet representative posed his questions both to the petitioner and to the United States representative. As I recall, the United States representative did make some acknowledgement of improvements in the conditions in the Trust Territory arising out of these criticisms by the petitioner. I believe it is in order for the United States representative to reply to these questions.

Mr. GODING (Special Representative): I will make a short answer first to the first question with regard to discrimination in community clubs. I took action on a date which I cannot recall and sent out instructions that there would be no further segregation in any such clubs throughout the Territory. This was without any reference to the position of the petitioner. At that time I did not know his personal position on this subject. Furthermore, on the condition of the school he alluded to, I suspect that the condition might have existed. I would not deny, and I do not deny, that we have some very inadequate schools and we have had. This is, of course, one of the big things we have been bending every effort possible to rectify. This is the very programme that I have been discussing before the Council of increased appropriations and all-out efforts to get schools of an acceptable standard throughout the Territory. I hope that this answers the questions of the Soviet representative.

The PRESIDENT: It is my understanding that the petitioner is not a resident of New York City, and there is a desire by him to return to his place of residence as soon as this is possible. I would like to consult the Council about its desire to complete this evening the questioning of the petitioner in order not to inconvenience him.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): If the Soviet delegation is the only delegation which wishes to ask questions of the petitioner and also of the representative of the Administering Authority, then I would like to say that our questions would long ago have been completed if we had received answers to the questions we asked. In this respect, I would like to refer to the fact that we did not receive an answer to our question about the interrelationship or correlation in terms of providing community services and facilities between the inhabitants of the island and the representatives of the Administration, of which the petitioner speaks in page 5 of his petition. I would also like to say that the Soviet delegation is asking these questions in particular because the information contained in the petition of Mr. Hosmer to a certain degree coincides with the Press reports which the Soviet delegation, in particular, quoted at the twenty-ninth session of the Trusteeship Council during the discussion of the conditions obtaining in the Pacific Islands. In this case, I have in mind particularly a copy of The New York Times published in April 1962.

The PRESIDENT: Does any other member of the Council wish to put questions to the petitioner?

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): I should like to apologize, since it is possible that I did not make myself quite clear. My statement contained a question, and I very much hope that the United States representative will find it possible to answer that question.

The PRESIDENT: I apologize to the Soviet representative. I thought that he was merely making a statement, not asking a question.

Mr. YATES (United States of America): May I ask the Soviet representative to put his question specifically as a question so that we know what it is?

The PRESIDENT: I have said that I understood that it was a statement which the representative of the Soviet Union was making, rather than asking a question.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): I should like to read a passage in the petition and to ask the representative of the United States to comment on it and to answer whether or not the situation has changed. On page 5 of the petition we read the following: (continued in English)

"He had no electricity in his home, no telephone, no water, no sewer and no road and was living on that beautiful island in squalor while our personnel were living in comfort with all of these modern conveniences and attending a segregated community club..."

Mr. GODING (Special Representative): I think that I did cover the latter part of that question as to whether there are or were segregated community clubs. I say that there are not any at present. The petitioner visited only one of the six District centres in the Trust Territory. Conditions vary substantially in each of these six Districts. In the Marianas Islands and in Saipan the conveniences of electricity and water are available to practically everyone on the islands. On some of the other islands the Administration facilities were designed originally as small bases and simply did not have the capacity to extend services. There is no rule. We extend the services just as rapidly as possible and are extending water, sewerage systems and electricity as we can improve the capacities of our water systems and other utilities. Living conditions themselves and the standards of living vary considerably.

I recognize, and have recognized, that we have a very great obligation. The last Visiting Mission made this point and we have been endeavouring to carry out the expressed recommendations made by the Mission which, after all, made a very thorough tour of the area and offered rather extensive comments in this respect. We have quite adequate sewer, water and telephone power in some Districts while it is quite inadequate in others.

Mr. FOTIN (Union of Soviet Socialist Republics) (interpretation from Russian): I must confess that I have not received a full answer to my question. In connexion with the statement of the Special Representative, in which he pointed out that he had sent instructions that all forms of segregation should be ended, I should like to point out that, unfortunately, there is a difference between the sending of instructions and the actual situation. I am not asserting that discrimination exists at the present time in any part of the Territory, although the petition makes particular mention of this. I would simply point out that instructions on paper are one thing, but that perhaps the actual situation may not change even after the dispatch of these instructions. When we asked our question we had in mind, first, the actual situation and not the documents, however meritorious they might be and however fully they reflect the desire of the Administering Authority to put an end to various forms of discrimination, particularly a segregated club.

Mr. YATES (United States of America): I think it should be made clear that the representative of the Soviet Union is under a misapprehension. The order was given and the discrimination has been eliminated. Thus, while it is true that the instructions were on paper, they were followed up in fact and the former situation no longer exists.

The PRESIDENT: If members of the Council do not intend to pose other questions to the petitioner, I shall thank him for his presence before the Council as a petitioner at his own request.

Mr. HOSMER: I thank the members of the Council for listening to me. I am going to return to my home in Missouri tonight or early in the morning, so I shall not be available for more questions. I am most grateful to this great Organization for having listened to my plea. Thank you very much.

Mr. Hosmer withdrew.

The meeting rose at 6.38 p.m.